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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/613,096 | 07/07/2003 | Hajime Watabe | 109899.01 | 5089 |

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| EXAMINER | |
|---|---|
| EPSHTEYN, ALEXANDER | |
| **ART UNIT** | **PAPER NUMBER** |
| 3713 | |

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/613,096 | WATABE ET AL. | |
| | Examiner | Art Unit | |
| | Alex Epshteyn | 3713 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *07 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *07 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 7-7-03
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Priority*

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

### *Specification*

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 6 – 8, 10 - 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker (US Patent 5,486,001).

Regarding claim 1, 15, and 17, Baker teaches of training and gaming apparatus comprising:

- A storage section for storing a predetermined assigned movement (see column 2, lines 52 – 53)
- A way to detect a movement of a player (see column 2, lines 50 – 51)
- A way to compare the detected movement of the player and the predetermined assigned movement stored (see column 2, lines 54 – 56) on the basis of a direction, or speed (see column 3, lines 25 – 26).

In regards to claim 4, Baker teaches of specifying the movement of the player to be compared to a movement of the predetermined assigned movement specified by the game on a basis of direction and speed (see column 3, lines 14 – 26). The apparatus as taught by Baker, further teaches of displaying a decision according to the comparison between said movement of the player and said predetermined assigned movement.

In regards to claim 6 - 8, 16, and 18, Baker teaches of a game apparatus in which a comparison is made between the movement of the player and a movement of a predetermined assigned movement corresponding to detection regions (see column 2, lines 16 – 25). The comparison of the movements is thus decided by considering the movement of the player over a plurality of detection regions.

In regards to claim 10, Baker teaches of a game apparatus where the comparison decision changes the decided comparison according to a predetermined condition detected by the movement of the player (see column 2, lines 36 – 45). In the case of the apparatus of Baker, as the movement of the player changes, the comparison mechanism changes the visual image signals when compared to the said predetermined condition.

In regards to claim 11 - 13, Baker teaches of a game apparatus where the detection region is changed according to a predetermined condition detected by the movement of the player (see column 3, lines 14 – 26). In the case of the apparatus of Baker, if the arm length of a particular player is shorter then the arm length of the previous player, the detection region of the apparatus will change to

accommodate the shorter player and the movements detected by the movement detection of the game. Thus, the predetermined condition relates to the body shape and motions of the player detected by the movement detection section.

In regards to claim 14, Baker teaches of a chip, which streams pixel data into a microprocessor (see column 5, lines 60 – 67), which is what an artificial retina chip does.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 2, 3, 5, and 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Baker and further in view of Ota (US Patent 6,001,013).

7. Regarding claims 2, 3, and 5, Baker teaches of a game apparatus where a comparison is made between the movement of the player and the predetermined assigned movement (see column 2, lines 54 – 56). Baker, however, lacks a timing element for comparing the movements on a basis of a predetermined time, for every time of a predetermined movement. Ota, in the same field of endeavor, teaches of a dancing game where a beat is displayed on the game and a player must make a corresponding dance movement within the scope of a predetermined time (see column 2, lines 39 – 50).

Ota further teaches of the timing of the dance movement to be indicated by a visual timing decision where a score will increase if the player movement is found to be the same as the predetermined assigned movement and is performed within the predetermined assigned time (see column 3, lines 53 – 56).

It would have been obvious to one skilled in the art at the time the invention was made to have modified the teachings of Baker and incorporate the teachings of Ota so that the apparatus as taught by Baker would have a more competitive element as a dance game in that the dance maneuver of the game would have to be performed within a specified time. This would create a more challenging and attractive way to play the game.

8. Regarding claim 9, Baker teaches of a game apparatus, which comprises a region by region comparison of the player movement and the predetermined assigned movement (see column 2, lines 16 – 25). Baker, however, lacks a display section for displaying a decision according to the comparison of the said movement of the player and the said predetermined assigned movement. Ota, in the same field of endeavor, teaches of a dance game where a predetermined assigned movement in a particular region is displayed to the player and a comparison of the predetermined assigned movement to the input of the player in all regions of the predetermined assigned movement (see column 7, lines 62 - 67) and the score is adjusted if the correct dance move is performed by the player in each region (see column 8, lines 1 – 4), thereby providing a visual display of a correct dance move by the player in each region.

It would have been obvious to one skilled in the art at the time the invention was made to have modified the teachings of Baker and incorporate the teachings of Ota so that the apparatus as taught by Baker would have a more interesting operation as a dance game so that all regions of dance captured by the Baker apparatus would be compared to the predetermined assigned movement and the result of which would be broadcast to the player.

***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. It is first noted that although the current application is a divisional of patent 6,663,491, which was a restricted case, the claim scope of the present application does not relate to those claims which were earlier elected to be withdrawn from consideration. Instead, the claims of the present application relate specifically to those claims which were elected in the previous application of patent 6,663,491. Thus, a double patenting rejection is appropriate in this case.

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 and 11 of U.S. Patent No. 6,663,491. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims 1 and 11 of U.S. Patent 6,663,491 includes the scope, which is word for word, the scope of claim 1 of the present application.

Claims 2 – 18 are rejected under the judicially created doctrine of double patenting over claims 8, 9, 10, 23 – 25, and 27 – 40, of U. S. Patent No. 6,663,491 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Both the prior patent and the instant application claim the same invention of a dancing game with a movement display section, a similarity decision section, a timing notice section, and a movement specifying section. Furthermore, every aspect of the present invention is outlined and claimed in the previous patent.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Epshteyn whose telephone number is 571-272-5561. The examiner can normally be reached on M-F 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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XUAN M. THAI
SUPERVISORY PATENT EXAMINER
TC3700